divisible as to title, public policy must approve of the language of the court, that such rights are indivisible as to exercise.

VENDOR AND PURCHASER — VENDOR'S LIEN — AVAILABILITY TO THE BENEFICIARY OF THE CONTRACT OF SALE. — The vendor conveyed land to the vendee, taking in consideration the vendee's promise to pay the purchase price to the vendor's daughter. *Held*, that the daughter is entitled to a grantor's lien on the land. *Lenox* v. *Earls*, 185 S. W. 232 (Mo.)

The rationale of the doctrine of the grantor's lien has been variously stated. See 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1250. It has most commonly been spoken of as a constructive trust. *Wilkinson* v. *May*, 69 Ala. 33. See 1 PERRY, TRUSTS, 6 ed., §§ 231, 232. But the theories on which this doctrine is generally supported have been strongly objected to. *Ahrend* v. *Odiorne*, 118 Mass. 261. See 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., §§ 1234, 1250. A theory not alluded to in the criticisms cited is that the trust is imposed to prevent fraud. *Ahrens* v. *Jones*, 169 N. Y. 555, 62 N. E. 666. But there can be no actual fraud in the making of a promise which one intends to keep. It is submitted that the better view is that the lien arises from a "natural judicial conception" that the thing sold should be security for the purchase price. See 3 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 1250. The decision of the principal case may very likely be dependent upon which view of the grantor's lien the court has taken. That of a constructive trust may allow the lien to arise in favor of a beneficiary whether or no the beneficiary is given a right at law for the purchase price. *Ahrens* v. *Jones*, *supra*. If, however, the lien is based on the idea that the thing sold should be security for the purchase price, it follows directly that the lien should benefit the person to whom the purchase price is due. Thus the result in the principal case can be reached only in those jurisdictions which give a sole beneficiary a right at law. The principal case is generally supported by those courts which allow a grantor's lien. *Zwingle* v. *Wilkinson*, 94 Tenn. 246, 28 S. W. 1096; *Pruitt* v. *Pruitt*, 91 Ind. 595.

BOOK REVIEWS

MODERN LEGAL PHILOSOPHY SERIES: VOLUME VII. MODERN FRENCH LEGAL PHILOSOPHY. By A. Fouillée, J. Charmont, L. Duguit, and R. Demogue; translated by Mrs. Franklin W. Scott and Joseph P. Chamberlain, with an editorial preface by Arthur W. Spencer and with introductions by John B. Winslow and F. P. Walton. Boston: The Boston Book Company, 1916. pp. lxvi, 578.

The volume is a mosaic. Part I ("A Brief Survey of Philosophy of Law in France") is made up of extracts from Fouillée's *L'Idée Moderne du Droit* and of eight chapters from Charmont's *La Renaissance du Droit Naturel*. Part II ("Some Important Points of View in Contemporary French Legal Philosophy") is made up of other extracts from Fouillée's *L'Idée Moderne du Droit*, from Duguit's *L'État: Le Droit Objectif et la Loi Positive*, and from Part I of Demogue's *Les Notions Fondamentales du Droit Privé*.

These extracts have the unity of time and place. They justify the title of the book. They are modern, they are French, and they are legal philosophy. Local color predominates. A discussion of such a general topic as free scientific research presupposes a system of law, like the French code, as the basis of reality upon which to rear a structure of philosophical speculation. While Demogue discusses security, liberty, and justice in most general terms, he usually has in mind a section of the French civil code, or a decision from one of the

collections of cases. Often our authors frankly confine themselves to a consideration of French legal thought, yet even a superficial reading shows that German influence, whether by way of attraction or repulsion, has been very great and that German ideas have been received, analyzed, and worked out with characteristic French clarity and precision. The form and spirit are of France, but back of it is the power and force of Germany. Stammler's *Naturrecht mit wechselndem Inhalt* is the avowed source of Charmont's discussion of natural law; and even where Duguit differs most sharply from Jellinek, Gierke, and Preuss, he shows their influence and power most frankly. In drawing inspiration from Germany, France has done well. Modern thought would be cramped and dwarfed if Germany had refused a reception to French ideas, or France to German ideas. In their mutual interchange of thought they have chosen better than most of us on this side of the Atlantic. The editors have attempted to show modern French legal thought as it is. If they portray confusion, it is because modern legal thought, French or otherwise, is in confusion. With whatever success Fouillée may prove that the essential characteristics of French legal thought are always the same in its enthusiasm, its optimism, and its love of liberty, we need only compare Duguit's theory of objective law with Charmont's discussion of such theory to see that even if the spirit is everywhere the same, the fundamental assumptions are divergent. As against Charmont's natural law with a variable content we may set Duguit's rule of conduct, permanent in content, but changing in form; and while Duguit identifies this rule with solidarity, Charmont seeks to show that solidarity is incapable of being transformed logically into an obligatory rule; and Demogue says that solidarity is a convenient compromise for various issues, a skilful system of plucking a great many fowl without making them cry out. But this is all the confusion of life: of an active intelligence that questions the very foundations of society, that calls on law to justify itself, and that takes nothing for granted.

These extracts are for the most part characterized by an analysis, the accuracy of which is so hidden by the perfection of the style that it is not discovered until one tries to improve upon it. The clear lucid style is French in its charm and simplicity. Our authors prove the truth of Berolzheimer's proposition that it is a fallacy to suppose that it is not philosophical to write clearly and simply, and that the artificial language of philosophy is useful only to one who wishes to conceal how meager or how unphilosophically simple is his stock of ideas. The translators have caught the beauty of form while giving us an accurate rendition of the thought.

Perhaps Duguit's theory of law and of the state will arouse the greatest interest and perhaps the greatest hostility in American readers. He finds the base of all human phenomena to be the individual mind. Man becomes conscious of the solidarity which unites him to his fellows, both solidarity by similitude and solidarity by division of labor. The rule of conduct which is to govern men is in short to respect every act of individual will, determined by an end of social solidarity; to abstain from every act that would be determined by an end contrary to social solidarity; to coöperate in the realization of social solidarity. In the theory of the state as set forth by Duguit in *L'État: Le Droit Objectif et Loi Positive*, he agrees with Jellinek that guaranty, of which coercion is but one method, is the essential mark of the idea of law, and that the rules of law are not so much rules of coercion as guaranteed norms. He differs from Jellinek when the latter regards the power of commanding without contradiction and of compelling perfect obedience as the criterion which distinguishes the power of the state from every other power. He agrees with Preuss and Gierke that Law and the State are twin sisters, and not parent and child. He differs from them when they accept the dogma of the personality of the state if it is to be a state governed by the law. The result which he seeks to accomplish is avowedly negative. He seeks, not to show what the state

is or what law is, but what they are not. That all doctrines of the personality of the state are either fictions or run in a vicious circle; that a state is only the man or group of men who are naturally stronger than others; that law is obligatory solely because it is a fact; that if a state were a legal person, it could only be despotic; that a self-limitation by the state of its own powers is impossible; that the force of the state is not of itself legitimate but that it becomes so only when it is employed to uphold law, that is, to guarantee coöperation in social solidarity, all will astonish and possibly antagonize the American reader. Probably it was not written to please, but to arouse thought. It may be, as Duguit himself says, that he, too, in spite of all his endeavors, has put pure abstractions in place of facts, and that he, like those whom he criticises, has attempted to bring within an *a priori* conception the highly complex and multiple phenomena of the social world. Charmont has attempted to show the illusions of Duguit. Whether we agree with Charmont or not, we must admit, even if we differ from Duguit's views separately and in combination, that it is easier to refuse to discuss them than it is to answer them in detail.

Demogue attempts to balance the interests of security and justice. He shows the difficulty of protecting the interests of security in a society in which, as he quotes from von Ihering, the law, like a Saturn, who devours his own children, rejuvenates itself only by breaking with its past. He scoffs at solidarity, though he concedes its practical advantages, as a compromise, of not colliding too directly with justice and security, though it is not in accord with them. He finds in security the justification for the tendency of modern life to divide losses, which others would justify by solidarity; but he concedes that in insecurity there is a certain joy of strife and triumph. He regards natural law, the ideal law with a variable content, as very hard to discover even if we are sure it exists; he puts state law, state art, and state religion in the same class; but he concedes that the most important principles must be enforced by the coercive power of the state. While seeking the ideal, law must at all events adapt itself to actual conditions, and it must compromise conflicting interests rather than push any idea to the extreme limit. To him the goal of our juridical efforts is to be a compromise which will bring about a reconciliation of hostile interests, though with the result that the equilibrium thus established is but temporary, and that law is forced to be a very subtle science.

Charmont gives us an outline of the recent development of French legal philosophy, including an account of the renaissance of legal idealism and the theory of natural law with a variable content; and Fouillée discusses the French spirit and idea of law and sets forth his theory of the ideal right. The editorial preface by Arthur W. Spencer gives us an excellent series of short biographies of our authors, of whom most American readers would otherwise know nothing, and a concise statement of the position of each in juristic thought, a statement which is of great value to most of us, and of great interest to all, whether or not we agree entirely with his estimate in each particular case. Another statement helpful, though brief, of the scope of the Legal Philosophy Series in general and of this volume in particular, is found in Dr. Walton's introduction; while the introduction by Chief Justice Winslow shows that some, at least, of the bench understand that our common law is facing a crisis as great as that which the English law faced in the twelfth century, or the Germanic law on the continent faced in the fourteenth to the sixteenth centuries — the crisis which confronts every system of law whose established principles give it no clue to the answers to many questions which life has propounded suddenly.

Besides the survey of modern French juristic thought we can, incidentally, get an appreciation of ourselves. Americanism is, to Fouillée, an exclusive attention to practical results, which has had its hour among the youthful people of a new continent chiefly occupied in earning a livelihood, but which would

be dangerous for England and for Germany as well as for France; and, to Demogue, a formidable machine of war of a nature to destroy security and to threaten justice. WM. HERBERT PAGE.

INDUSTRIAL CONDITIONS IN SPRINGFIELD, ILLINOIS. By Louise C. Odencrantz and Zenas L. Potter. New York: Russell Sage Foundation. pp. 173.

In the preparation of this report, the authors have sought to present a background of theory "made practical and readily understandable through the concrete illustrations" provided by the facts in a fairly typical city. The entire survey shows the large extent to which most conditions in Springfield are dependent on state legislative and state administrative forces — conditions which are beyond immediate local control. Lack of coöperation and of law enforcement by the various state industrial agencies shows the necessity of creating an Industrial Commission, similar to the Wisconsin commission, with broad powers of administrating the law. The survey shows that in the great majority of the varying, detailed, and multitudinous conditions presenting physical hazards it is not practicable to trust to specific laws, though in some instances the report recommends intelligent constructive means of handling particular evils through specific legislation.

This report should be useful in clearing up the "general confusion in the public mind as to the actual principles and real problems" involved in industrial relations, and will be found of value to those desiring a better understanding of labor problems in the average community. LLOYD H. LANDAU.

THE MUNICIPAL COURT OF CHICAGO. Eighth and Ninth Annual Reports. Chicago. 1916. pp. 164.

This report reveals the work of a very highly specialized judicial organism. In addition to the ordinary criminal and civil branches we find here a Quasi-Criminal Branch, a Domestic Relations Branch, a Morals Court Branch, an Automobile Court Branch, a Small Claims Branch, a Boys' Court Branch. More striking still is the Psychopathic Laboratory, to a discussion of whose work pages 12–33 of the Report are given. The presence of such an organization in the actual body of a city court marks a remarkable step in the treatment of criminal defectives; that the step is in the right direction no one who runs through this Report can doubt. It is, however, a misfortune from a lawyer's point of view that more space could not have been given to a detailed description of the actual relations between Court and Laboratory. We are in some sense agreed that psychopathic laboratories as a part of city courts are valuable; what we need now to know is how they can be run.

THE AMERICAN PLAN OF GOVERNMENT. By Charles W. Bacon, assisted by Franklyn S. Morse. New York and London: G. P. Putnam's Sons. 1916. pp. xxi, 474.

IMPERIAL STATUTES IN FORCE IN NEW SOUTH WALES. By H. B. Bignold. Sydney: The Law Book Company of Australasia. 1913. pp. 299.

A TREATISE ON THE RESCISSION OF CONTRACTS AND CANCELLATION OF WRITTEN INSTRUMENTS. By Henry Campbell Black. Two Volumes. Kansas City: Vernon Law Book Company. 1916.

LE PROBLÈME DE LA FORCE HYDRAULIQUE AUX ÉTATS-UNIS. Par Rome-G. Brown. Saint-Cloud: Imprimerie Belin Frères. pp. 19.